

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 359 of 1990

with

CRIMINAL REVISION APPLICATION No 130 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

DAHYA RUDA RAVAL

Appearance:

1. Criminal Appeal No. 359 of 1990
MR LR PUJARI, APP for Petitioner
MR FA MEMON for Respondent No. 1, 2, 3, 4, 5, 6, 7, 8, 9,10,11,12,
3,14,15
MR KB PUJARA for the original informant.
2. Criminal Revision ApplicationNo 130 of 1990
MR. LR PUJARI, APP for Petitioner
MR FA MEMON for Respondent No. 1, 2, 3, 4, 5, 6, 7, 8, 9,10,11,12,
3,14,15
MR KB PUJARA for original informant.

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 09/07/97

ORAL JUDGEMENT

By means of filing this appeal under section 378 of the Code of Criminal Procedure, 1973, the State of Gujarat has questioned the legality and propriety of the judgment and order dated February 8, 1990 rendered by the Id. Judicial Magistrate (First Class), Radhanpur in Criminal Case No. 177/87 acquitting the respondents of the offences punishable under sections 147, 148, 149, 323, 324, 326, 504, 506(2) read with sec. 149 of the Indian Penal Code.

2. On February 21, 1987, Kanji Vaja who is the original informant, was returning to his house with his brother-in-law Madhabhai Dungarbhai in a cart. When the cart reached near the place known as " Kharu-Vaghu", the complainant and his brother-in-law noticed that Patel Cheharbhai Lakhdhirbhai, his two sons Arjan and Ladhu as well as his daughter Maliben were being assaulted by Raval Karamsi Jama, Mana Jama and others with dhariya, axes etc. Those who were being assaulted had raised shouts and, therefore, people nearby had also rushed to the place where they were being assaulted. It is the case of the complainant that he and others had intervened and saved Chehar Lakhdhir and others. The complainant and his brother-in-law brought the injured on road where ST bus was available and after sending the injured in ST bus going to Radhanpur, the complainant and his brother-in-law returned to home at about 6.30 P.M.. The incident in question is alleged to have taken place between 7.30 P.M.. to 8.00 PM. When the complainant was at his house, respondents came together, abused the complainant and took objection as to why the complainant had rescued Patel Chehar Lakhdhir and others in his cart. According to the prosecution, respondent no.8 had caused injury to the complainant on left hand finger and when his brother-in-law Madhabhai Dungarbhai tried to intervene, he was given a dharia blow by respondent no.13 which resulted into injury on the right hand thumb of Madhabhai Dungarbhai. According to the complainant, his wife Hemaben also intervened, but she was assaulted with a stick by respondent no.6. On shouts being raised, other witnesses had come and, therefore, according to the prosecution, the respondents had run away after intimidating the complainant and others.

3. The injured were removed to the hospital. Kanjibhai Vajabhai lodged complaint with PSI at about 2.00 A.M. on February 22, 1987 at the hospital itself. The complaint filed by the complainant was duly investigated. Panchanama of the place of occurrence of offence as well as panchanama under sec. 27 of the Evidence Act were also prepared during the course of investigation. On completion of investigation, the respondents were chargesheeted in the Court of the Ld. Judicial Magistrate (First Class) Radhanpur for the offences punishable under sections 143, 147, 148, 323, 324, 326, 504, 506(2) read with sec. 114 of the Indian Penal Code. The Ld. Magistrate framed necessary charge at exh.12. The charge was read-over and explained to the respondents. The respondents did not plead guilty to the charge and claimed to be tried. The prosecution, therefore, examined (1) Kanjibhai Vajabhai P.W.1 Exh.36 (2) Madhabhai Dungarbhai, P.W.2 Exh.49 (3) Hemaben Dungarbhai P.W.3 Exh.62 (4) Kuberbhai Panabhai P.W.4 Exh.63 (5) Velabhai Bavabhai P.W.5 Exh.67 (6) Kanubhai Dalabhai P.W.6 Exh.69 (7) Vajabhai Ajmal P.W.7 Exh.73 (8) Jehabhai Bavabhai P.W.8 Exh.74 (9) Naranbhai Thakor P.W.9 Exh.75 (10) Dahyagiri Shambhugiri P.W.10 Exh.79 (11) Sharadkumar Trivedi P.W.11 Exh.82 (12) Dr. Sevantilal Sanghavi P.W.12 Exh.86 (13) Rekhaben Maheshwari P.W.13 Exh.100 to prove its case against the respondents. The prosecution also produced documentary evidence such as complaint filed by Kantibhai, panchanamas prepared during the course of investigation, certificate of injuries of injured witnesses etc. in support of its case against the respondents.

4. The Ld. Magistrate questioned the respondents generally on the case and recorded their statements under sec. 313 of the Code of Criminal Procedure, 1973. After recording of evidence of the prosecution witnesses was over. In further statements, the respondents denied the case of the prosecution. However, none of the respondents led any evidence in defence.

5. On appreciation of the evidence led by the prosecution, the Ld. Magistrate disbelieved the prosecution case and acquitted the respondents by the impugned judgment giving rise to the present appeal. Mr. LR Pujari, Ld. APP has taken me through the entire evidence on record. It was submitted by the Ld. Counsel for the appellant that in view of the evidence of the injured complainant which is supported in material particulars by his complaint, the present appeal deserves to be allowed. It was pleaded that the evidence of the complainant is not only corroborated by his complaint,

but is also corroborated by the evidence of the injured witness Madhabhai Dungarbhai as well as Hemaben and, therefore, the respondents should be convicted of the offences with which they were charged. What was claimed by the Ld. Counsel for the appellant was that the evidence of the injured witnesses gets full support from the medical evidence on record and, therefore, the impugned judgment should be set aside. Mr. KB Pujara, Ld. Counsel appearing for the original informant also argued that the prosecution has proved its case against the respondents beyond reasonable doubt by leading evidence of injured witnesses which is supported by the medical evidence and, therefore, the acquittal of the respondents recorded by the Ld. Magistrate should be set aside.

6. Mr.F.A. Memon, Ld. Counsel for the respondents contended that the evidence of the injured complainant is not corroborated by his own complaint and, therefore, no error can be said to have been committed by the Ld. Magistrate in not placing reliance on his evidence. The Ld. Counsel further urged that the evidence of the complainant completely rules out the presence of so-called eye-witnesses examined by the prosecution and, therefore, the acquittal of the respondents should not be interfered with by the Court in the present appeal. It was also highlighted by the Ld. Counsel for the respondents that the evidence of the prosecution witnesses does not get support from the medical evidence and as two views are possible, the present acquittal appeal filed by the State of Gujarat should be dismissed.

7. Though witnesses Vajabhai Ajmal who is the father of the complainant and Kuberbhai Panabhai exh.63 claim to have witnessed the incident, their presence is eliminated by the complainant himself. Under the circumstances, it cannot be said that any error is committed by the Ld. Magistrate in not placing reliance on the deposition of those two witnesses. Hemaben has asserted in her evidence that she was able to identify fifteen respondents but she has admitted in her crossexamination that she had come out of the house after completing household work. Therefore, it cannot be said that the evidence of Hemaben establishes that the respondents had participated in the incident in question. Madhabhai Dungarbhai who is brother-in-law of the complainant has stated that he is resident of village Varsada and does not know any of the respondents by name. The Ld. Magistrate has rightly held that in absence of identification parade, no reliance can be placed on the deposition of Madhabhai Dungarbhai for coming to the

conclusion that the respondents had assaulted the injured. So far as evidence of the complainant is concerned, there are material contradictions and omissions in his evidence. The complainant has asserted before the Court that Madhabhai Dungarbhai had sustained injury on the right hand thumb by means of a dhariya. However, the doctor who had examined Madhabhai Dungarbhai had found fracture on the finger adjoining the thumb and not on the thumb of the right hand of Madhabhai Dungarbhai. Similarly, the evidence of the complainant with reference to the injuries sustained by Kuberbhai Pana also does not get support from the medical evidence. It is relevant to note that the complainant had received a simple injury which according to the doctor, was possible by a fall. Having regard to the inconsistency in the evidence led by the prosecution, I am of the view that no error is committed by the Ld. Magistrate in not relying upon the evidence of the complainant. There is no manner of doubt that the evidence led by the prosecution to substantiate charge against the accused respondents is unsatisfactory and in view of inherent improbabilities appearing in the evidence of the prosecution witnesses, no exception can be made to the acquittal of the respondents.

8. This is an acquittal appeal in which the Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be proper to set aside the order of acquittal, more particularly when evidence has not inspired confidence of the Ld. Magistrate. As I am in general agreement with the view expressed by the Ld. Magistrate, I do not think it necessary either to reiterate the evidence of the prosecution witnesses or to restate the reasons for acquittal given by the Ld. Magistrate and in my view, expression of general agreement with the view taken by the Ld. Magistrate would be sufficient in the facts of the present case. This is so in view of the decisions rendered by the Supreme Court in the cases of (1) Girija Nandinidevi & Ors. v/s Bigendra Narayan Chaudhary, AIR 1967 SC 1124 and (2) State of Karnataka v/s Hema Reddy & Anr., AIR 1981 SC 1417. On overall appreciation of the evidence, I am satisfied that there is no infirmity in the reasons assigned by the Ld. Magistrate for acquitting the respondents. Suffice it to say that the Ld. Magistrate has given cogent and convincing reasons for acquitting the respondents and Ld. APP has failed to dislodge the reasons given by the Ld. Magistrate in order to convince me to take a view contrary to the one already taken by

the Ld. Magistrate. Therefore, acquittal appeal deserves to be rejected.

9. For the foregoing reasons, I do not see substance in the appeal. The appeal, therefore, fails and is dismissed. Muddamal be disposed of in terms of the directions given by the Ld. Magistrate in the impugned judgment.

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